

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

**Wincrest Nursing Center Corp. and SEIU Healthcare
Illinois and Indiana. Case 13-CA-46751**

November 22, 2011

DECISION AND ORDER

BY CHAIRMAN PEACE AND MEMBERS BECKER
AND HAYES

The Acting General Counsel seeks a default judgment in this case on the ground that Wincrest Nursing Center Corp, the Respondent, has failed to file an answer to the consolidated complaint and compliance specification. Upon a charge filed by SEIU Healthcare Illinois and Indiana, the Union, on May 17, 2011, the Acting General Counsel issued a Complaint, Compliance Specification, Order Consolidating Complaint and Compliance Specification, Answer Requirement, and Notice of Consolidated Hearing on August 24, 2011. The Respondent failed to file an answer.

On October 6, 2011, the Acting General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on October 7, 2011, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. Similarly, Section 102.56 of the Board's Rules and Regulations provides that the allegations in a compliance specification will be taken as true if an answer is not filed within 21 days from service of the compliance specification. In addition, the consolidated complaint and compliance specification affirmatively stated that the Board may find, pursuant to a motion for default judgment, that the allegations in the consolidated complaint and compliance specification are true unless an answer was received by September 14, 2011. Further, the undisputed allegations in the Acting General Counsel's motion disclose that the Region, by letter dated September 23, 2011, notified the Respondent that unless an answer was received by September 30, 2011, a motion for default judgment would be filed. Nevertheless, the Respondent failed to file an answer.

In the absence of good cause being shown for the failure to file a timely answer, we grant the Acting General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a nursing home and an assisted living community, with an office and place of business in Chicago, Illinois, the Respondent's facility, has been engaged in the business of providing medical care and assisted living facilities and services to adults.

During the 12-month period preceding issuance of the complaint, a representative period, in conducting its operations described above, the Respondent derived gross revenues in excess of \$100,000, and purchased and received goods and services for use at its facility valued in excess of \$5000 directly from points outside the State of Illinois.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Ricky Singh held the position of Administrator and has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act.

The following employees of the Respondent, the unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time Certified Nurses Assistants (CNAs), Dietary Employees, Housekeeping Employees, Laundry Employees, Activity Aides, Rehab Aides and Psychosocial Aides employed by Respondent at its facility currently located at 6326 North Winthrop Avenue, Chicago, Illinois; but excluding all other employees, licensed practical and registered nurses, confidential employees, casual employees, guards, and supervisors as defined in the Act.

Since at least January 1, 1997, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and since then the Union has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most

recent of which was effective from January 1, 2008 through December 31, 2011.

At all times since at least January 1, 1997, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

About April 6, 2011, the Respondent and the Union reached complete agreement on a shutdown agreement covering the unit and about April 11, 2011, executed the agreement (the shutdown agreement).

Since about May 13, 2011, the Union, by letters and emails, requested that the Respondent adhere to the shutdown agreement.

Since about May 13, 2011, the Respondent has refused to adhere to the shutdown agreement.

CONCLUSION OF LAW

By the conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(5) and (1). The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(5) and (1) by refusing to adhere to the shutdown agreement with the Union, we shall order the Respondent to make the employees whole by paying them the amounts set forth in the consolidated complaint and compliance specification,¹ plus interest accrued to the date of payment at the rate prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010), enf. denied on other grounds sub nom. *Jackson Hospital Corp. v. NLRB*, 647 F.3d 1137 (D.C. Cir. 2011), and minus tax withholdings required by Federal and State laws.

Finally, in view of the fact that the Respondent's facility has apparently closed, we shall order the Respondent to mail a copy of the attached notice to the Union and to

the last known addresses of its former unit employees in order to inform them of the outcome of this proceeding.

ORDER

The National Labor Relations Board orders that the Respondent, Wincrest Nursing Center Corp, Chicago, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with SEIU Healthcare Illinois and Indiana as the exclusive collective-bargaining representative of the employees in the following unit by failing and refusing to adhere to the provisions of the shutdown agreement executed by the Respondent and the Union on April 11, 2011:

All full-time and regular part-time Certified Nurses Assistants (CNAs), Dietary Employees, Housekeeping Employees, Laundry Employees, Activity Aides, Rehab Aides and Psychosocial Aides employed by Respondent at its facility currently located at 6326 North Winthrop Avenue, Chicago, Illinois; but excluding all other employees, licensed practical and registered nurses, confidential employees, casual employees, guards, and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make whole the unit employees for the Respondent's failure, since May 13, 2011, to adhere to the provisions of the shutdown agreement, by paying them the total amounts opposite their names in the Attachment to this decision, plus interest accrued to the date of payment at the rate prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010), enf. denied on other grounds sub nom. *Jackson Hospital Corp. v. NLRB*, 647 F.3d 1137 (D.C. Cir. 2011), and minus tax withholdings required by Federal and State laws. The total amount due is \$58,806.70, plus interest.

(b) Within 14 days after service by the Region, duplicate and mail, at its own expense and after being signed by the Respondent's authorized representative, copies of the attached notice marked "Appendix"² to the Union

¹ We have attached to this decision and order the table attached to the consolidated complaint and compliance specification that sets forth the amount due each discriminatee. As set forth in that table, the Respondent owes employees \$58,806.70, without interest, for accrued vacation and accrued sick pay, rather than \$53,305, as stated in the consolidated complaint and compliance specification. Accordingly, the amount due set forth below reflects this corrected total.

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Mailed by Order of the National Labor Relations Board" shall read "Mailed Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

and to all unit employees employed by the Respondent at any time since May 13, 2011.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. November 22, 2011

Mark Gaston Pearce,	Chairman
Craig Becker,	Member
Brian E. Hayes,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX
NOTICE TO EMPLOYEES
MAILED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to mail and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on
your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with SEIU Healthcare Illinois and Indiana as the exclusive collective-bargaining representative of our employees in the following unit by failing and refusing to adhere to the provisions of our shutdown agreement with the Union, executed on April 11, 2011:

All full-time and regular part-time Certified Nurses Assistants (CNAs), Dietary Employees, Housekeeping Employees, Laundry Employees, Activity Aides, Rehab Aides and Psychosocial Aides employed by us at our facility currently located at 6326 North Winthrop Avenue, Chicago, Illinois; but excluding all other employees, licensed practical and registered nurses, confidential employees, casual employees, guards, and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL make whole our unit employees for our failure, since May 13, 2011, to adhere to the provisions of our shutdown agreement with the Union, by paying them the total amounts set forth in the attachment to the Board's Order, plus interest accrued to the date of payment.

WINCREST NURSING CENTER CORP.

ATTACHMENT

Name	Rate of Pay	Vacation Accrued	Sick Hours Accrued	Vacation Due	Sick Due	Total Due	Interest	Total
Ethel Johnson	\$9.35	47.25	64	\$441.79	\$598.40	\$1,040.19	\$9.00	\$1,049.00
Leticia Miranda	\$10.60	79.5	80	\$842.70	\$848.00	\$1,690.70	\$14.00	\$1,705.00
Alfoncia Obispo	\$9.50	90	110	\$855.00	\$1,045.00	\$1,900.00	\$16.00	\$1,916.00
Maria Pena	\$12.43	119.25	110	\$1,482.28	\$1,367.30	\$2,849.58	\$24.00	\$2,873.00
Sergio Rosas	\$14.24	132.5	240	\$1,886.80	\$3,417.60	\$5,304.40	\$44.00	\$5,348.00
Jesus Zacatenco	\$12.94	92.75	240	\$1,200.19	\$3,105.60	\$4,305.79	\$36.00	\$4,341.00
Maria Diaz	\$8.70	64	24	\$556.80	\$208.80	\$765.60	\$6.00	\$772.00
Adeniji Alhaji	\$10.85	128	120	\$1,388.80	\$1,302.00	\$2,690.80	\$22.00	\$2,713.00
Rahmat Adeniyi	\$9.25	45	40	\$416.25	\$370.00	\$786.25	\$7.00	\$793.00
Mary Aggemang	\$9.05	24.5	24	\$221.73	\$217.20	\$438.93	\$4.00	\$443.00
Kafyat Akinlolu	\$9.05	10.5	16	\$95.03	\$144.80	\$239.83	\$2.00	\$242.00
Darlene Archer	\$9.75	37.15	120	\$362.21	\$1,170.00	\$1,532.21	\$13.00	\$1,545.00
Adegoke Bililisu	\$9.05	20	24	\$181.00	\$217.20	\$398.20	\$3.00	\$401.00
Elinder Brown	\$11.95	106	240	\$1,266.70	\$2,868.00	\$4,134.70	\$34.00	\$4,169.00
Regina Erhabor	\$11.05	13.25	24	\$146.41	\$265.20	\$411.61	\$3.00	\$415.00
Aderonke Fashola	\$11.85	21	80	\$248.85	\$948.00	\$1,196.85	\$10.00	\$1,207.00
Pristley Fokum	\$10.95	119.25	48	\$1,305.79	\$525.60	\$1,831.39	\$15.00	\$1,847.00
Jennifer Gyimah	\$11.50	60.75	180	\$698.63	\$2,070.00	\$2,768.63	\$23.00	\$2,792.00
Amudat Jimoh	\$9.05	7	16	\$63.35	\$144.80	\$208.15	\$2.00	\$210.00
Pamela Jones	\$9.90	0	84	\$0.00	\$831.60	\$831.60	\$7.00	\$838.00
Oghara Nimota	\$9.05	3	40	\$27.15	\$362.00	\$389.15	\$3.00	\$392.00
Patience Okpogie	\$11.05	0	32	\$0.00	\$353.60	\$353.60	\$3.00	\$357.00
Olushola Olaleye	\$10.45	9	92	\$94.05	\$961.40	\$1,055.45	\$9.00	\$1,064.00
Bessie Owens	\$16.45	48	64	\$789.60	\$1,052.80	\$1,842.40	\$15.00	\$1,858.00
Albert Oyeribor	\$10.20	20	80	\$204.00	\$816.00	\$1,020.00	\$8.00	\$1,028.00
Candace Sinclair	\$9.45	14	24	\$132.30	\$226.80	\$359.10	\$3.00	\$362.00
Marshall Smith	\$9.75	32	80	\$312.00	\$780.00	\$1,092.00	\$9.00	\$1,101.00
Catherine Nwosu	\$15.56	92.75	240	\$1,443.19	\$3,734.40	\$5,177.59	\$43.00	\$5,220.00
Roberto Diaz	\$10.05	40	40	\$402.00	\$402.00	\$804.00	\$7.00	\$811.00
Maria Garcia	\$11.23	134	240	\$1,504.82	\$2,695.20	\$4,200.02	\$35.00	\$4,235.00
Eva Quintana	\$9.75	70	58	\$682.50	\$565.50	\$1,248.00	\$10.00	\$1,258.00
Eulalio Campos	\$9.30	30	144	\$279.00	\$1,339.20	\$1,618.20	\$13.00	\$1,632.00
Camello Torres	\$8.90	30	32	\$267.00	\$284.80	\$551.80	\$5.00	\$556.00
Eddie Moffet	\$12.10	80	180	\$968.00	\$2,178.00	\$3,146.00	\$26.00	\$3,172.00
Altina Shorty	\$12.00	0	24	\$0.00	\$288.00	\$288.00	\$2.00	\$290.00
Uzoho Okechukwu	\$14.00	0	24	\$0.00	\$336.00	\$336.00	\$3.00	\$339.00